

REMARKS

This Amendment is being submitted in response to the Office Action dated April 13, 2007. Claims 1 and 14 have been amended. The application now includes Claims 1 through 16, with Claim 1 being the only Independent Claim. Favorable reconsideration of the application, as amended, is respectfully requested.

Paragraph 0009 of the specification has been amended to clarify the meaning of a well-known industry acronym. Paragraph 0031 has been amended to correct a typographical error to place the written description in conformance with the flow chart shown in Fig. 4. Applicant attests that the amendments to the specification herewith have added no new matter to the application.

The Examiner rejected Claim 14 under 35 U.S.C. §112, second paragraph, as being indefinite for lacking a preceding claim upon which it depends. The typographical error of Claim 14 has been corrected to indicate a preceding claim for dependency.

The Examiner rejected Independent Claim 1 and Dependent Claims 2, 7, 11, 13-16 under 35 U.S.C. §103(a) as obvious over Published U.S. Application No. 2004/0218604 to Porter (hereinafter "the Porter reference") in view of Published U.S. Application No. 2006/0227706 to Burst, JR (hereinafter "the Burst, JR. reference"). These rejections are respectfully traversed.

Applicants have amended Independent Claim 1 to recite a method of controlling service access to an internet protocol backbone network that includes providing at least two service classes. Amended Claim 1 also recites that the service classes are distinguished by varying levels of service wherein at least one service class has a lesser demand than the other service class. Amended Claim 1 further recites allowing the user to select the service class for the internet protocol backbone network and then dividing the users into the selected service class. Consequently, the recited selection of service class is predicated upon a user's value determination for a desired level of service for message transport.

Applicants have carefully reviewed the Porter reference and believe that reference is directed at a method for allocating communication bandwidth that is

based, in part, on the technical underpinnings of the type of transmission utilized. The Porter reference provides, in Par. 0011, lines 1-2, that "[t]he allocation of bandwidth to users is subject to different constraints for different types of communication.". Accordingly, applicants believe that the system described in Porter teaches a two-tier service classification for establishing transmission priorities based on system bandwidth availability. As described in Par. 0012, lines 1-4 of the reference, the two-tier service classification consists of a first tier based on the type of service and a second tier based on the class associated with the particular service in a system overload condition. Thus, the Porter reference divides "subscribers" into "users" based on the type of transmission requests being attempted, not based solely on a customer preference, as described in Par. 0012, lines 7-11, and Par. 0024, lines 3-8. In this context, the "subscribers" of the Porter reference correspond to the users of the present invention. These requests are further subdivided into classes based on a priority scheme associated with the type of transmission request ("user"), whether the user is in an active or inactive pool, and the prevailing system overload conditions.

Regarding the Burst, JR. reference, applicants believe that the reference teaches providing a packet-switched network having the same reliability and service quality as a conventional phone carrier can provide, as described in Par. 0055, lines 1-8. In pertinent part, the Burst, JR. reference teaches, in Par. 0056, lines 3-7, that "...the carrier must provide a level of QoS [quality of service] which provides low loss and a reasonable delay for the RTP voice packets in the IP core, and at the same time provide, at a minimum, best effort service for data".

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. In this instance none of the three criteria have been met.

Regarding motivation, amended Claim 1 recites that the user is provided with a choice of at least two levels of service corresponding to varying levels of message transport that reflects the priority of service the customer may enjoy. The customer's selection of a level of service does not parse access based on the technical usage the customer requires, i.e. voice versus data transmission and the associated bandwidth requirements for each. The service classes are designated and occupied based on user selections in response to a user's determination of needs. The division of users into service class categories is not based upon system constraints relative to the technical requirements of the information to be transmitted.

As described above, a "subscriber" in the Porter reference, which may be a business concern, would not be able to affirmatively select a class 1 status for all subscriber transmissions. Further, as the Examiner points out on page 3 of the Office Action, the Porter reference also fails to teach an internet protocol backbone network having a plurality of access points including traffic control devices. The Burst, JR. reference teaches an internet protocol backbone network, but provides no teaching or suggestion that the various levels of service may be selected based on a user-defined, class segmentation model. The Burst, JR. reference further teaches, in Par. 0056, lines 6-8, that a "best effort service for data". This "best effort" approach does not contemplate traffic control devices that are responsive to particular service class designation as recited in amended Claim 1. Therefore, applicants believe that the Burst, JR. reference teaches away from combining its teachings with the Porter reference in the manner advanced by the Examiner.

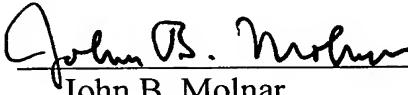
The second factor in supporting a *prima facie* case of obviousness is a reasonable expectation of success. In combining the cited references, one of ordinary skill in the art would likely attempt to provide a consistent level of service across the IP backbone network in order to prevent a negative customer perception of the packet switching technology as applied to the telecommunications industry. As such, applicants believe that the combination of the references would not result in the user-selected, class segmentation scheme of the present invention, as recited in amended Independent Claim 1.

The third factor in supporting a prima facie case of obviousness requires the combination of references to teach all of the claim limitations of the present invention. Here, applicants believe that the combination of the Porter and Burst, JR. references fails to teach a user-selected service level, as recited in amended Independent Claim 1. Rather, both Porter and Burst, JR. teach that the system retains a discretionary element in determining either the "user" group of Porter or the priority transmission effort of Burst, JR.

Therefore, applicants believe that a combination of the references actually teaches away from the user-selected, class segmentation scheme of the present invention, as recited in amended Independent Claim 1. Accordingly, applicants believe that amended Independent Claim 1 is patentable over the art of record and respectfully request that the Examiner withdraw his rejection of the Claims.

Amended independent Claim 1 of the present invention has been distinguished over the prior art references cited by the Examiner. For at least these reasons, the remaining claims which are dependent upon amended Claim 1 are also distinguishable over the cited combinations of the prior art references. Applicant believes that the claims of the present invention are presently in condition for Allowance. As such, Applicant respectfully requests a withdrawal of the remaining rejections under 35 U.S.C. §103(a) and issuance of an early Notice of Allowance.

Respectfully submitted,



John B. Molnar
Reg. No. 31,914

MacMillan, Sobanski & Todd, LLC
One Maritime Plaza, Fifth Floor
720 Water Street
Toledo, Ohio 43604
(419) 255-5900